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IGOR TROITSKI
6971 DANCING CLOUD AVE
HENDERSON NV 98011-5009

In re Application of:
TROITSKI, IGOR et al
Serial No.: 10/751,325
Filed: Jan. 5, 2004
Docket: n/a
Title: METHOD FOR PRODUCTION OF 3D
LASER-INDUCED IMAGES WITH
INTERNAL STRUCTURE

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: DECISION ON PETITION

This is a decision on the petition filed on March 5, 2009 seeking to review the Office actions of June 30, 2005 and Feb. 26, 2006 issued by the examiner as incomplete. This petition is being considered pursuant to 37 CFR §1.181. No fee is required.

The petition is **DISMISSED AS UNTIMELY.**

On pages 13-14 of Paragraph IX and pages 16-22 of Evidence for Conclusion of the March 5, 2009 petition, petitioner requests the Office to review the Office actions in the currently abandoned application because the examiner failed to properly examined the claimed invention and address all limitations in claims 18-27. The examiner failed to answer the applicant's arguments.

A review of the record shows that the instant petition was filed almost three years after the mailing date of the last Office action of Feb. 26, 2006 (final rejection). Pursuant to 37 CFR 1.181(f)¹, the petition is not timely filed since the petition was not filed within two months of the action complained of. As the petition was not timely filed, the requested review and withdrawal of Office actions can not be granted.

With regard to the substantive arguments as set forth on pages 13-14 and pages 16-22 of the petition, the examiner used the applicant's own patent to reject claims 18-27 under 35 USC 102(b) in the rejection. Apparently, petitioner was not satisfied with the examiner's response in

¹ 37 CFR 1.181(f): The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

her last final-Office action of Feb. 16, 2006. In the petition, the issues presented by petitioner are clearly directed to the propriety of the examiner's rejection of claims 18-27 under 35 USC § 102 (b). The question of whether the examiner has properly considered and interpreted certain claim limitations in the rejection of claims under 35 USC § 102 (b) is clearly an appealable issue under 37 CFR § 41.31(a) (1). According to 37 CFR § 1.181(a)(1)², it is clear that petitioner's arguments will not support the requested relief, because the relief requested is simply not the type of relief that can be obtained by petition. The propriety of claim interpretation in a rejection of a claim, ultimately, is to be determined by the Board of Patent Appeals and Interferences in accordance with 37 CFR § 1.181(a) (1).

In view of the record, petitioner's request to review and withdraw the Office action dated Feb. 26, 2006 is dismissed as untimely. Issues regarding the interpretation of claim limitations in the rejection of claims are appealable and will not be decided by petition. The application has been abandoned for failure to respond to the final-Office action of Feb. 26, 2006. Therefore, the application remains abandoned.

Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED AS UNTIMELY.



Robert Olszewski, Director
Technology Center 3700

² 37 CFR § 1.181(a) (1) states: Petition may be taken to the Director: (1) From any action or requirement of any examiner in the ex parte prosecution of an application, or in the ex parte or inter partes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court.